

Attention: **EXAMINER RUDY ZERVIGON**
Phone: (703) 305-1351

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GROUP 1763 PERSONNEL: THE DOCUMENT TO FOLLOW IS A

RESPONSE AFTER FINAL

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including:

- ☒ [X] Response under 37 CFR §1.116
- ☐ [] Notice of Appeal
- ☐ [] Appeal Brief under 37 CFR §1.192 (filed in triplicate)
- ☐ [] Reply Brief under 37 CFR §1.193(b)(1) (filed in triplicate)
- ☐ [] Continued Prosecution Application (CPA) Request Transmittal
- ☐ [] Other: _____

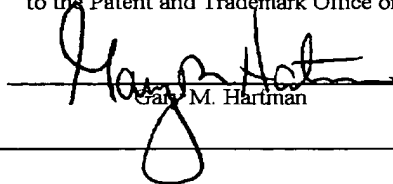
for filing in U.S. Patent Application Serial No. 09/624,810

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Gary M. Hartman

November 8, 2002

Date

Page 1 of 4

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PATENT
Docket No. 13DV-13228

12

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Robert W. Bruce et al.

Examiner: Rudy Zervigon

Serial No.: 09/624,810

Art Unit: 1763

Filed: July 24, 2000

For: ELECTRON BEAM PHYSICAL VAPOR DEPOSITION APPARATUS

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REPLY UNDER 37 CFR §1.116

Assistant Commissioner for Patents
Washington, D.C. 20231

In the Advisory Action of October 10, 2002 (Paper No. 10), the Examiner rejected claims 1-10. Three rejections were maintained from the Office Action dated July 31, 2002 (Paper No. 8): a rejection of claims 1-10 under 35 USC §102 on the basis of a public use/sale bar, a rejection of claims 1-4, 6, 7, 9 and 10 under 35 USC §102 in view of U.S. Patent No. 4,988,844 to Dietrich et al. (Dietrich), and a rejection of claims 5 and 8 under 35 USC §103 in view of Dietrich.

Serial No. 09/624,810
Docket No. 13DV-13228

Incomplete Advisory Action

The present Advisory Action does not acknowledge or rebut Applicants' arguments presented in their preceding response filed September 30, 2002. In particular, the present Advisory Action (1) fails to indicate that Applicants' "request for reconsideration has been considered" (i.e., Paragraph 5 of the Advisory Action was not checked), and (2) fails to provide an explanation (also required by Paragraph 5) as to why Applicants' arguments were not effective to overcome the rejections. Such an omission is contrary to MPEP 706.07¹ and 707.07(f)².

By failing to comply with the MPEP, the present Advisory Action fails to establish any grounds as to why the §§102 and 103 rejections should be maintained. As such, a second Advisory Action must be filed containing a substantive response to each of Applicants' arguments presented in their response of September 30, 2002, setting forth grounds as to why Applicants' arguments were not effective to overcome the rejections. Without a second Advisory Action, Applicants are unfairly denied the opportunity to learn what the Examiner's arguments will be on appeal for finding Applicants' arguments unpersuasive and for maintaining the rejections.


¹ "[T]he final rejection . . . should include a rebuttal of any arguments raised in the applicant's reply."

² "Where the applicant traverses any rejection, the examiner should, if he or she repeats the rejection, take note of the applicant's argument and answer the substance of it."

Serial No. 09/624,810
Docket No. 13DV-13228

The Examiner is asked to call Applicants' undersigned representative if he/she has any questions with respect to the above, or any other matter now of record.

Respectfully submitted,

By 
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November 8, 2002
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